

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 16

Houston, Texas

C.A.R. TRANSPORT, INC.

Employer

and

Case 16-RC-10933

GENERAL DRIVERS, WAREHOUSEMEN
AND HELPERS LOCAL UNION NO. 988, affiliated
with THE INTERNATIONAL BROTHERHOOD
OF TEAMSTERS

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board. Pursuant to the provisions of Section 3(b) of the Act, the Board delegated its authority in this proceeding to the undersigned. Upon the entire record, in which the Employer and Petitioner filed briefs, the undersigned makes the following findings and conclusions.¹

¹ The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed. The Employer filed a Motion for Post Hearing Transfer and Consolidation, which is denied. The Employer also filed a Petition to Revoke Petitioner's Subpoena. The record reflects that both parties argued the appropriateness of whether an adverse inference be made because the Employer failed to fully comply with the subpoena in lieu of requesting a ruling on the Petition to Revoke Petitioner's Subpoena. Based upon the record and the subsequent ruling, the Petition to Revoke is moot.

I. SUMMARY

Petitioner Teamsters Local No. 988 (Petitioner) seeks to represent a unit composed of all transport drivers employed by Employer C.A.R. Transport, Inc. (Employer) domiciled at 202 Westfield Loop in Houston, Texas, excluding clerical employees, mechanics, porters, supervisors, managers, and guards, as defined in the Act. The Employer asserts that the only appropriate unit would include all transport drivers employed by the Employer at its Houston, Texas, Burleson, Texas² and Kansas City, Kansas terminals. The parties stipulated no collective bargaining agreement covers the petitioned-for employees and assert no contract bar exists to this proceeding.

Based upon the record as a whole and careful review of the parties' briefs, I find that the petitioned-for single facility unit is appropriate and I will direct an election in that unit. In making this determination, I relied on the factors that the Board examines to determine whether a single facility unit or a multi-facility unit is appropriate. In doing so, I review the facts, including an analysis of the Employer's operations and managerial structure.

II. FACTS

A. Employer's Operations

The Employer is engaged in the business of transporting cars from railroad terminals and auctions to dealers and other purchasers of the automobiles. The Employer is headquartered in Burleson, Texas. In addition to maintaining a terminal in Burleson, it maintains a Houston, Texas terminal, also known as the Westfield terminal, and a terminal in Kansas City, Kansas. The Houston terminal is located about 230 miles from the Burleson terminal and approximately 770 miles from the Kansas City terminal. The Kansas City terminal is located about 560 miles

² The Employer also has an unmanned terminal, located in Mesquite, Texas, which is serviced by the Burleson drivers.

from the Employer's Burleson terminal. The Houston terminal employs 27 drivers, while Kansas City and Burleson employ 24 and 21 or 22 each, respectively.

About 80 percent of the drivers' work involves picking up and delivering new cars and the remaining 20 percent involves auction stock. The Employer's Houston terminal transports new cars from the terminals and rail yards to dealerships within its region. Specifically, the Houston terminal delivers to Juarez, Mexico, El Paso, Texas and as far east as Alabama and Atlanta, Georgia. Drivers from the Houston terminal also deliver as far north as Kansas and Missouri and as far south as the Gulf of Mexico. The Houston terminal also moves auction freight to and from dealerships. These loads are made on a daily basis from the Houston terminal. Some of the Houston terminal drivers are assigned to pick up daily loads at the Pearland (Burlington Northern Santa Fe) auto facility, where the drivers pick up automobiles and deliver them to several dealerships. Other Houston drivers pick up vehicles daily at the Kansas City Southern Railway location (Rosenberg), which is located in the southwest section of the city of Houston, and pick up and deliver vehicles. Other Houston drivers also pick up some vehicles at the Union Pacific distribution yard in the northern section of Houston on a daily basis and deliver them directly to dealerships. The work from the Pearland, Rosenberg and Union Pacific yards comprise the bulk of the work performed by the 27 drivers employed at the Houston terminal.

The Burleson terminal picks up and delivers vehicles from the rail yard located in Mesquite, Texas. The Kansas City terminal services multiple customers for a certain geographical area. While testimony reflects that the terminals deliver in overlapping areas, the Employer did not identify with any specificity when the overlap occurred or how often it occurred.

B. Employer's Managerial Structure

The Employer is headed by Chief Executive Officer John Hawkins, who works in the Burleson office. Hawkins has several officers who report directly to him including Safety/Operations Director Bill Wynn, Chief Financial Officer Charles Wynkoop III and Vice President of Logistics Robert Mitchem. Human Resource Manager Caroline Goosen reports directly to CFO Wynkoop. The majority of the Employer's managerial team is located in the Burleson location, but Mitchem, who also serves as the Houston Terminal Manager, works in the Houston terminal.

The Employer employs managers and dispatchers at each of its facilities. In addition to Mitchem, the Houston terminal supervisory team includes Assistant Terminal Manager Deangela Mourland and Houston Terminal Dispatcher Monica Gates. Both report directly to Mitchem. Mourland manages the Houston terminal in Mitchem's absence and performs dispatch and load makeup duties.

As referenced above, Mitchem serves as the Houston terminal manager as well as the Vice President of Logistics. As part of his duties, he manages the other terminals. Kansas City Terminal Manager Joanne Wheeler reports directly to Mitchem. Kansas City Assistant Terminal Manager Emmett Rocha reports directly to Wheeler. The Kansas City facility also employs a dispatcher, who reports to Wheeler. The Burleson dispatchers report to CEO Hawkins. The Burleson facility does not employ an assistant terminal manager.

The Burleson terminal dispatchers (or central dispatchers) dispatch for its terminals, including the unmanned Mesquite terminal, and may dispatch for any of the other locations if their systems are unavailable. The Burleson terminal builds its own loads, which it assigns to Burleson drivers.

Likewise, the Kansas City terminal builds its loads for Kansas City drivers delivering from its Kansas City location. Wheeler may call Mitchem or the Burleson office about dispatch issues and reports all operational issues, such as the daily dispatch, the volume activity, the number of drivers used and the number of vehicles in the shop, to Mitchem.

C. Hiring Procedure

The Employer's CEO, Wynn and/or Goosen determine driver qualifications but must follow DOT requirements. Staffing requirements are based upon the amount of traffic received by each terminal. The local terminal manager decides whether additional or fewer drivers are required. The hiring process begins with the local terminal manager notifying the Burleson office about an opening. The local terminal manager cannot waive job requirements and does not have the authority to hire employees, but will accept job applications and conduct interviews. The final decision to hire is made by the Burleson office by the Employer's CEO, Wynn or Goosen.

D. Driver Qualifications and Duties

Drivers must possess a Class A CDL (commercial driver's license) and two years over-the-road experience in a tractor trailer combination unit. They also need to pass a physical exam and a drug screen as well as meet Department of Transportation requirements.

All of the Employer's drivers drive diesel-powered tractor-trailers. They transport and deliver automobiles, trucks, vans, etc. to dealerships and to and from auctions; inspect their units as required by company policy and DOT regulations to ensure their vehicles are safe to operate and have ample quantities of fuel, oil and water; comply with all regulations, rules, and company procedures while performing job duties; report all road hazards observed on route; deliver and pickup units; obtain signed receipts; collect and sign for units as instructed (including physically

locating, inspecting loading and or unloading and properly securing the units as required); immediately report all accidents in which they are involved regardless of the extent of damage or injury; and at the end of each trip report the condition of the equipment used as prescribed by DOT requirements.

E. Driver Equipment

The drivers from the Houston and Burleson terminals operate nine-car rigs, which are operated by the more experienced drivers, and a flat-bed rig, which is operated by the entry-level drivers and carry three or four vehicles. The Kansas City terminal does not operate the flat-bed rigs because their region does not have the demand for that type of equipment. Every truck at each location could run cities or long hauls, so there is no difference in the distances the trucks run. All drivers are subject to long or short runs even if they have preferences.

F. Employer Rules, Policies and Record Keeping

All driver personnel records and payroll records are housed at the Burleson location. All drivers are offered the same benefits, such as vision, medical, health insurance, death insurance and 401(k). Goosen manages the benefits and the local terminal management does not have the authority to alter benefits. Goosen handles all terminations and resignations.

The Employer also offers paid and unpaid sick leave, which is handled through the Burleson office. The local terminal managers decide whether to grant an employee time off based upon whether the driver is needed. If the driver's absence would require additional drivers to be assigned to the terminal, the terminal manager will ask the Burleson office to provide additional drivers. If the Burleson office is unable to secure additional drivers, local management would be forced to deny the request for time off. If a driver requests time off but

lacks sufficient leave, the local terminal manager must coordinate with the Burleson office when deciding whether to grant unpaid leave.

The Employer's handbook, which is distributed to all employees, sets forth all company holidays, benefits, and employment policies for all employees, including the drivers. The handbook encourages employees to ask questions and advises employees to follow the chain of command, starting with the lead person, supervisor or manager, for problems or questions. The handbook also advises employees to report sexual harassment and other types of discrimination to their supervisor or manager and/or Human Resource Coordinator.

The Burleson office employs two trainers who travel to the terminals to conduct on-site training for each newly-hired driver. They also conduct recurring training as necessary. On occasion, a local terminal manager may request additional training after certain instances, such as after there has been reported damage to the cargo.

The Burleson office, through Wynn, oversees safety issues and makes sure government regulations are implemented. The Burleson office administers the Department of Transportation's (DOT) mandatory drug tests to its drivers, which are conducted by random selection. Although a driver is notified when he must take the test by his terminal manager, the manager does not determine who is selected for the test. After the test is conducted in the employee's local area, the results are sent directly to Burleson. The local terminal manager does not receive a copy of the results. If a driver is in an accident that may require drug testing, the employee will be sent to a facility near the accident site. After receiving a positive test in either a random or post-accident drug test, the Burleson office will determine whether to counsel or terminate a driver.

The Burleson office also makes sure the drivers complete DOT-required annual physicals and determines when the physical will occur. The Burleson office notifies a driver when his physical is due and selects the doctor in the employee's local area for the examination. After the physical exam is completed, the report is sent to the Burleson office.

G. Employer Payroll Practices

Each terminal gathers payroll information on its drivers. The payroll information is then forwarded to the Burleson office for further processing. After a driver completes a load, he obtains a delivery receipt, which he turns in to the local terminal each day. The drivers also submit logs, which are generated electronically and initial load sheets, which are generated at a driver's respective terminal. The local terminal gathers and forwards the records to the corporate office in Burleson for further processing. The paperwork is submitted once weekly to ADP, which processes the payroll. The Burleson office instructs ADP whom to pay and what amount.

H. Driver Pay Structure

The Employer did not identify what the pay range currently is for the drivers at any of the locations in question and only generally described the pay structure. The Employer's CEO testified that a driver's rate of pay does not change if he performs temporary work at another terminal. However, no pay records were provided to substantiate this testimony.

Drivers receive pay per mile, load pay, and skid drop pay. The amount drivers are paid per mile depends on whether they are operating a smaller truck such as a flat-bed rig, which is operated by entry-level drivers and carries three or four vehicles, or a nine-car rig, which is operated by the more experienced drivers. The drivers also receive load pay, which is a certain amount per car loaded and depends on whether they are loading new cars or auction cars. Skid drop pay is based upon each time a driver unloads a car at a different location.

New drivers start at a certain scale, which the Employer did not reveal at hearing, and may be increased based upon the skill and abilities of the drivers. Future increases in the driver's rate per mile, load pay and skid drop pay are determined by the rating system contained in the individual driver's performance review. The local terminal manager participates in the driver's annual performance evaluation. After the local terminal manager evaluates the driver's performance, the terminal manager submits the evaluations to the Burleson office, where it is reviewed by Gooden and Hawkins before final submission.

The terminal manager's recommendation in a driver's performance review carries much weight because the Employer considers that he is in the best position to evaluate a driver's performance. The employee handbook states that the local terminal manager has a significant impact on an employee's evaluation. The handbook identifies that the supervisor will discuss past performance and goals with the employee. If the employee disagrees with the evaluation, the handbook instructs the employee to discuss it with the supervisor, and only after that contact Human Resources to "help further mediate discussions with your Supervisor."

The local terminal manager makes recommendations for pay raises, which are reviewed based upon the Employer's economic conditions. The final decision about the percentage to be used for driver raises is made by the Employer's CEO.

I. Employee Meetings

Wynn is responsible for overall safety and maintenance. He conducts safety meetings with employees at their respective terminals. Goosen and Wynkoop conduct employee benefits meetings with employees at each terminal. The record reflects that drivers do not attend meetings with drivers from other terminals; however, if a driver from another terminal is in the geographical area, that driver may attend a meeting with the terminal's drivers. The record does

not reflect how often drivers from other terminals attend meetings with employees at another terminal.

J. Local Supervision's Interaction with Drivers

The Employer's terminal managers have daily interactions with their drivers. They make driver assignments and perform pre-trip and post-trip inspections with the drivers. After information concerning the loads is electronically transmitted from the automotive manufacturers, the terminal managers build and dispatch the loads per truck, and they inform the drivers of any special requirements. The loads must be matched from a delivery standpoint to meet both the manufacturers' and the Employer's needs to ensure that deliveries are made within the necessary time frame and that the loads fit on each truck. The terminal managers follow company instructions when building loads.

After the load is built, either the terminal manager or the dispatcher contacts the drivers for his terminal. After a driver arrives for work, he obtains paperwork showing what dealerships he is delivering for and then goes into the appropriate rail yard to pick up new cars or to the auction to pick up used cars. The driver then loads his vehicles without any assistance, inspects the load and delivers the cars to dealerships. They report to the dispatcher on duty for load assignments and for all matters pertaining to the pickup and delivery of assigned load and report to the terminal driver supervisor concerning all other matters. Unlike new car freight, auction freight is dispatched by the Burleson dispatchers instead of the local terminal manager and/or dispatchers.

A driver's load may be "cross docked," which occurs when cars are to be delivered to two different destinations. In these instances, which the Employer concedes are infrequent, the driver may bring the cars to a local yard, move them off one truck and on to another truck for

final delivery by another driver. In this case, the second driver would report to the local terminal manager where he was dropping off or picking up the cars. Also, if a truck has available space on it and is driving through a certain area, the driver may be told to stop to pick up cars. In that situation, the driver would report to the local terminal manager.

The terminal managers also perform inspections of the truck to check the truck's condition, whether it is empty and verify that the load is properly loaded and strapped down. If the terminal manager finds something wrong in the inspection of a load, security or safety, he will highlight it and make a recommendation to Burleson about what action is to be taken. The terminal manager will write a warning and then send it to Burleson for review before executing it.

K. *Temporary Assignments, Work Performed at Other Locations and Transfers*

Occasionally, drivers are temporarily assigned to perform work at other locations. Such instances may occur when a manufacturer has a seasonal "push" to get as many cars as possible delivered to its dealers and when inclement weather causes deliveries to be backed up. When a driver is sent to assist another terminal, he will arrive at the pick up location and deliver the vehicle without visiting the other terminal. According to the Employer's CEO, drivers may be temporarily reassigned for as many as 14 days during these periods. Although the Employer's CEO testified that this happens, "daily for many drivers at many terminals," the Employer record failed to provide specific testimony about how frequent the transfer of loads or partial loads occurred. The Employer also did not provide records to demonstrate when such occurred. In addition, a Houston driver testified that he had never seen a transfer that lasted for a week or two. The Employer's CEO also testified that a driver may ask for a temporary assignment from one region to another region and the Employer will accommodate these requests. However, the

Employer failed to present any specific examples of the Employer granting temporary assignment requests and did not demonstrate how frequently it occurred. The record reflects a single instance where a driver requested a permanent transfer (from Houston to Kansas City).

Drivers may “back-haul” loads from another terminal. Back-haul loads occur after a driver completes his deliveries, which were dispatched by his local terminal, and he is sent to pick up a load from the nearest terminal pickup or auction pickup in order to avoid returning with an empty truck. These back-haul loads are built by the Burleson office, which dispatches the loads to the driver, while coordinating with the driver’s local manager. When back-hauling, the driver will receive the dispatch from the Burleson dispatch, but may not travel to the Burleson terminal. Instead, he will go to the site where he is picking up the vehicle(s). Whenever a driver is operating out of another terminal, he reports to that terminal’s supervisor.

The record reflected contradictory testimony regarding when the drivers were notified to call about back-haul loads and how long this procedure had been in effect. According to the Employer, the call-in procedure is about six years old. In contrast, an employee testified that the Employer recently announced this procedure at a meeting attended only by Houston drivers and management. The employee testified that, as of March 1, 2010, drivers must call the Burleson yard when they are outside 100 or 150 miles from their terminal to find out if they will carry a backhaul. If the driver is less than 100 to 150 miles away from his terminal, he is to report back to his terminal.

L. Driver Discipline

Local terminal managers lack the authority to terminate or suspend a driver without first consulting Goosen, Wynn or CEO Hawkins. Hawkins testified that he, Goosen or Wynn review employee warnings before they are issued and they may increase or decrease the severity of the

discipline. The record evidence shows that Mitchem issued discipline to Houston employees, but does not reflect if any managers from Burleson were involved in the decision. Several exhibits reflect Mitchem's signature on the disciplinary actions. Although the record testimony reflects that customer complaints are forwarded to the Burleson office for resolution, a complaint with the handwritten notation shows that it was "forwarded to Robert" (Mitchem).

M. Driver Interaction and Contact

The drivers spend very little time at the terminal and spend more time at the yard loading and inspecting their trucks. The record reflects little evidence of interaction with drivers outside an assigned facility. Occasionally, a Houston driver will see Burleson drivers inside the terminal yard and office area, but this happens only about once a month or once every other month. Houston drivers also may talk to Burleson drivers on the phone, at auctions or at the Rosenberg and Westfield rail yards, but the record does not reflect how often these contacts occur. The evidence did not establish any contact between the Houston and Kansas City drivers.

III. APPROPRIATE UNIT

The Employer contends that the only appropriate unit includes all truck drivers employed at all of its terminal facilities instead of the petitioned-for single facility in Houston. The Employer failed to present sufficient evidence to support its assertion; thus, the Employer did not meet its burden of establishing that the only appropriate unit includes all of its truck drivers at its Houston, Burleson and Kansas City, Kansas terminals.

The Act does not require that the petitioned-for unit be the only appropriate unit, the most appropriate unit, or what could become the ultimate unit; it only requires that the unit be "appropriate." See, e.g., *Overnight Transportation Co.*, 322 NLRB 723 (1996); *Dezcon, Inc.*, 295 NLRB 109 (1989); and *Capital Bakers*, 168 NLRB 904 (1968). The unit sought by a

petitioner is relevant, but not determinative of the unit. *Marks Oxygen Co.*, 147 NLRB 228 (1964); *Airco, Inc.*, 273 NLRB 348 (1984). A single location unit is presumed to be appropriate. *Hegins Corp.*, 255 NLRB 1236 (1981); *Penn Color, Inc.*, 249 NLRB 1117, 1119 (1980). When a petitioner seeks a presumptively appropriate unit such as a single facility, the burden shifts to the party seeking a multi-facility unit to rebut the presumption. *Hilander Foods*, 348 NLRB 1545 (2006).

In cases where the petitioner is seeking a single facility, the Board will consider the past bargaining history, the extent of employee interchange, the work contacts existing among the groups of employees, the extent of functional integration of operations, the differences in the skills or types of work that is required, the centralization (or lack thereof) of management and supervision, particularly concerning labor relations, the power to hire, discharge, or affect the terms and conditions of employment, the physical and geographical location in relation to each other. *Alamo Rent-A-Car*, 330 NLRB 897 (2000); *Novato Disposal Services*, 328 NLRB 820 (1999); *R & D Trucking*, 327 NLRB 531 (1999); *RB Associates*, 324 NLRB 874 (1997); and *J & L Plate*, 310 NLRB 429 (1993). The general rule is that a single-plant unit is presumptively appropriate unless the employees at the plant have been merged into a more comprehensive unit by bargaining history, or the plant has been so integrated with the employees in another plant as to cause their single-facility unit to lose its separate identity. *Trane*, 339 NLRB 866 (2003); *Budget Rent A Car Systems*, 337 NLRB 884 (2002); *New Britain Transportation Co.*, 330 NLRB 397 (1999); *Centurion Auto Transport*, 329 NLRB 394 (1999); and *Kendall Co.*, 184 NLRB 847 (1970).

Applying these factors, I conclude that the Employer has not met its burden and the single facility presumption has not been rebutted. Although all drivers have the same skills and

qualifications, perform similar job duties and some functional integration exists in that the Burleson terminal will dispatch Houston drivers for back-haul loads and some freight has been rerouted from the Burleson yard to the Rosenberg yard, and that labor relations is somewhat centralized, these factors do not overcome the single facility presumption for the reasons outlined below.

First, the record reflects scant interchange between the Houston and Burleson terminal drivers. Although the Employer urges that there are occasions where the Burleson terminal drivers assist the Houston terminal drivers such as pushes and inclement weather, such instances do not establish significant interchange. Significantly, the record shows no interchange between the Kansas City terminal drivers and the Houston terminal drivers and such interchange would be necessary to mandate the multi-facility unit urged by the Employer. Moreover, the amount of work contacts between the Houston and Burleson drivers is not substantial and the record reflects no work contacts between the Houston and Kansas City drivers. *Hilander Foods*, supra (Board determined little permanent employee interchange and infrequent contact between employees from different facilities weighs against a finding that the single-facility presumption has been rebutted). The record shows occasional phone calls and discussions at an auction site waiting for a load between drivers from the Burleson and Houston terminals, but these contacts establish minimal contact at best.

Even though much of the labor relations functions are centralized at the Burleson terminal, the evidence shows that the Houston terminal drivers are directly supervised by Mitchem while the Kansas City terminal drivers report directly to Wheeler. *Mercy Sacramento Hospital*, 344 NLRB 790 (2005) (citing *Passavant Retirement & Health Center*, 313 NLRB 1216, 1218 (1994) (separate supervision is of particular importance in determining whether the

single-facility presumption has been rebutted). The evidence shows that the respective terminal managers have daily interaction with their drivers by building and inspecting loads and in the initial dispatch from their sites. The local terminal manager may grant time off when he determines that the driver is not needed for the day. Such day-to-day managerial interactions with its employees establish that the local terminal manager has some autonomy in daily operations. *Centurion Auto Transport*, supra.

The record also establishes that the Employer relies heavily upon the local terminal manager's evaluation of employees when granting raises and its handbook encourages employees to discuss workplace matters including performance evaluations with the local terminal management before talking to the Human Resource Manager. *Hilander Foods*, supra (Board emphasizes whether employees perform their day-to-day work under the supervision of one who is involved in rating their performance and in affecting their job status and who is personally involved in daily matters which make up their grievances and routine problems).

Further, the evidence does not establish that the Houston terminal has been integrated with the Kansas City and Burleson terminals to such an extent that the Houston terminal lost its separate identity. As referenced above, the record reflects no interaction between the Houston drivers and the Kansas City drivers and, although there have been instances where Burleson drivers have contact with Houston drivers, such assistance does not establish significant employee interchange. The record did not reflect the degree of interchange. *Hegins Corp.*, 255 NLRB 1236 (1981).

The instant case is similar to *Bowie Hall Trucking, Inc.*, 290 NLRB 41 (1988). In *Bowie Hall*, the Board found the employer failed to rebut the single-facility presumption when there was no bargaining history and the terminal managers made the routine day-to-day decisions.

Despite central management final authority with regard to hiring and major disciplinary decisions; the terminal manager conducted the initial job interview and was consulted with respect to major disciplinary decisions. The record further demonstrated no interchange of work and only two transfers. *Id.* at 43. The Board specifically found that the geographic separation became significant in light of the lack of interchange. *Id.* Due to these factors, the Board found that the single-facility presumption has not been rebutted.

Both parties cite *WeCare Transportation, LLC*, 353 NLRB No.9 (2008). Therein, the Board found that the employer rebutted the single-facility presumption for two facilities in question. *Id.*, slip op. at 3-4. The drivers in *WeCare* had the same job responsibilities. However, their dispatchers had no independent judgment in granting time off. In addition, the drivers from one facility would stop at the other terminal when involved in a backhaul to pick up fuel. The drivers also had significant interchange, as exhibited by drivers from one facility appearing on the schedule 469 times within a 3-month period. *Id.*, slip op. at 2. In addition, in reviewing 84 days of records, two or more drivers were dispatched to the other terminal on 56 days. *Id.* The drivers from both terminals ran the same routes. *Id.*, slip op. at 3.

WeCare is differentiated from the present facts. The most striking difference is the lack of interchange between the Houston, Kansas City and Burleson drivers, compared to the demonstrated frequency of assignments to the second terminal in question in *WeCare*. The facts here do not demonstrate a merger between the Houston, Kansas City and Burleson terminals. Compare *WeCare*, 353 NLRB No. 9, slip op. at 3. Despite maps that show some overlap of routes, the record here does not reflect that the drivers are running the same routes, as in *WeCare*. The Employer presented no records to substantiate any significant interchange.

Finally, it is uncontested that the three terminals are located at great geographic distances from each other and there is no bargaining history at any of the locations. Because the record fails to establish significant temporary interchange, permanent interchange, and contact between employees at the various facilities, and because the record reflects significant geographic distance between the terminals, limited functional integration, and daily contact with supervisors in the drivers' respective assigned terminals, I find that the petitioned-for unit is appropriate and I shall direct an election in that unit.

IV. CONCLUSION

Based on the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.³
3. The labor organization involved claims to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

³ The Employer, C.A.R. Transport, Inc., is a Wisconsin corporation headquartered in Burleson, Texas and with a place of business in Houston, Texas, where it operates a trucking terminal for transporting automobiles. During the past twelve months, a representative period, the Employer purchased and received goods valued in excess of \$50,000 for the transportation of automobiles from the State of Texas directly to points outside the State of Texas. During the same time period, the Employer performed services valued in excess of \$50,000 in States other than the State of Texas.

5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

Included: All full-time and regular part-time transport drivers (truck drivers) employees employed by the Employer at its Houston, Texas facility.

Excluded: All other employees, including clerical employees, mechanics, porters, managers, guards and supervisors as defined in the Act.

V. DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the Unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the Unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to

be represented for collective bargaining purposes by **General Drivers, Warehousemen and Helpers Local Union No. 988 a/w International Brotherhood of Teamsters.**

A. List of Voters

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list for the unit, containing the full names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). This list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). Upon receipt of the list, I will make it available to all parties to the election.

To be timely filed, the list must be received in Region 16, 819 Taylor Street, Room 8A24, Fort Worth, Texas, on or before **May 6, 2010**. No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission at (817) 978-2928. Since the list will be made available to all parties to

the election, please furnish a total of **two** copies, unless the list is submitted by facsimile, in which case no copies need to be submitted. If you have any questions, please contact Region 16.

B. Notice Posting Obligation

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices of Election provided by the Board in areas conspicuous to potential voters for a minimum of 3 working days prior to the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

C. E-FILING

The National Labor Relations Board has expanded the list of permissible documents that may be electronically filed with its offices. If a party wishes to file one of the documents, which may now be filed electronically, please refer to the Attachment supplied with the Regional Office's initial correspondence for guidance in doing so. Guidance for E-filing can also be found on the National Labor Relations Board website at www.nlr.gov. On the home page of the website, select the **E-Gov** tab and click on **E-Filing**. Then select the NLRB office for which you wish to E-file your documents. Detailed E-filing instructions explaining how to file the documents electronically will be displayed.

D. Right to Request Review

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington by 5 p.m., EDT on **May 13, 2010**. The request may **not** be filed by facsimile.

Dated at Fort Worth, Texas this 29th day of April, 2010.

/s/ Martha Kinard

Martha Kinard, Regional Director,
National Labor Relations Board
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